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of the State of California
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7 Attorneys for Complainant

8
9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-2

13 **JOHN VOLLHABER, aka**
14 **JOHN VINCENT VOLLHABER**
360 Kings Way
Kalispell, Montana 59901

A C C U S A T I O N

15 Registered Nurse License No. 435700

16 Respondent.

17
18 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

19 **PARTIES**

20 1. Complainant brings this Accusation solely in her official capacity as the
21 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer
22 Affairs.

23 **License History**

24 2. On or about February 28, 1989, the Board issued Registered Nurse License
25 Number 435700 ("license") to John Vollhaber, also known as John Vincent Vollhaber
26 ("Respondent"). The license expired on August 31, 2000, and has not been renewed.

27 ///

28

1 CAUSE FOR DISCIPLINE

2 (Out-of-State Discipline)

3 8. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a)(4), on the grounds of unprofessional conduct, in that Respondent's nursing
5 license has been disciplined by the State of Montana Board of Nursing ("Montana Board").
6 Effective April 28, 2004, in the case entitled, *In the Matter of the Proposed Disciplinary*
7 *Treatment of the License of John Vollhaber, License No. RN 12488, Docket No. CC-04-149-*
8 *NUR*, pursuant to the Notice of Summary Suspension and Opportunity for Hearing,
9 Respondent's Registered Nurse License was summarily suspended for an indefinite period of
10 time pending further investigation and disciplinary proceedings based upon a pending criminal
11 action filed against Respondent for violating two counts of Assault with a Weapon and
12 Attempted Assault with a Weapon, all felonies. Respondent was ordered to return his 2004
13 license to the Montana Board.

14 On or about January 12, 2005, in the State of Montana, Respondent was convicted
15 of Assault with a Weapon and Sexual Intercourse without Consent with a Minor, both felonies.
16 Respondent was sentenced to prison for 10 years and 20 years, respectively, on the charges.

17 On or about January 25, 2007, the Montana Board entered its order granting an
18 entry of default, based upon Respondent's failure to plead or otherwise defend against the Notice
19 of Summary Suspension and Opportunity for Hearing. On that same date, the Montana Board
20 revoked Respondent's Nurse License No. 12488.

21 Copies of the Notice of Summary Suspension and Opportunity for Hearing,
22 Request for Entry of Default, Order Granting Entry of Default, and the Final Order of Default are
23 attached as **Exhibit A**, and are incorporated herein.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 435700 issued to John Vollhaber, also known as John Vincent Vollhaber;

2. Ordering John Vollhaber, also known as John Vincent Vollhaber to pay the Board the reasonable costs of the investigation and enforcement of this case, pursuant to Code section 125.3; and,

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/1/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

Exhibit A

Notice of Summary Suspension and Opportunity for Hearing

Request for Entry of Default

Order Granting Entry of Default

Final Order of Default

1 Lori Ballinger
2 Legal Counsel
3 DEPARTMENT OF COMMERCE
4 Professional and Occupational Licensing Division
5 301 South Park
6 P.O. Box 200513
7 Helena, MT 59620-0513

CERTIFIED CORRECT COPY OF ORIGINAL
OF PUBLIC RECORD, STATE OF MONTANA
BY: [Signature]
CUSTODIAN OF RECORDS

5 Attorney for the Department

8 **BEFORE THE BOARD OF NURSING**
9 **STATE OF MONTANA**

10 **IN THE MATTER OF THE PROPOSED**
11 **DISCIPLINARY TREATMENT OF THE**
12 **LICENSE OF JOHN VOLLHABER,**
13 **License No. RN 12488**

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Docket No. CC-04-149-NUR
NOTICE OF SUMMARY
SUSPENSION AND
OPPORTUNITY FOR HEARING

14 TO: John Vollhaber
15 c/o Flathead County Detention Center
16 800 South Main
17 Kalispell, MT 59901

18 **PLEASE TAKE NOTICE:**

19 The Screening Panel of the Board of Nursing of the State of Montana (Panel)
20 has found reasonable cause to believe that you have committed acts that authorize the
21 Board of Nursing to take disciplinary action against your license under the provisions of
22 sections 37-1-316, Montana Code Annotated (MCA). The Screening Panel further
23 determined that the threat to the public health, safety and welfare requires emergency

1 action and thus your nursing license be summarily suspended pursuant to MCA Section
2 2-4-631(3).

4 REASONS FOR THIS ACTION

5 The Screening Panel has considered information presented by the Department
6 of Commerce in making its reasonable cause finding. The following fact assertions and
7 conclusions summarize the allegations upon which the Screening Panel has authorized
8 the issuance of a Notice of Summary Suspension.

9 FACT ASSERTIONS

10 1. At all times relevant to this proceeding, you were a registered nurse, license
11 number RN 12488.

12 2. On June 12, 2003, you were charged with SOLICITATION, a felony. You
13 attempted to induce D.W. to engage in witness tampering by encouraging her to have
14 Jane Doe provide false or misleading testimony in a criminal case you believed was
15 pending against you.

16 3. On or about June 20, 2003, the Board became aware of possible violations of
17 the Nurse Practice Act because of an article in the Daily Inter Lake newspaper. The
18 newspaper article reported you had numerous criminal charges pending against you.

19 4. On July 9, 2004, the Board received a response from you in which you denied
20 the allegations and stated that your actions were solely motivated by a desire to assist a
21 young woman who was living in an abusive home.

22 5. On September 30, 2003 you were charged with the offense of SEXUAL
23 INTERCOURSE WITHOUT CONSENT, a felony. The Affidavit in Support of Motion for
24 Leave to File An Information stated that you knowingly, and without consent, had

1 intercourse with Jane Doe, a person under the age of sixteen (16) in violation of MCA §
2 45-5-503 (1). Specifically, the affidavit alleges:

3 a. At the time of the offense, you were 52 years of age and Jane Doe was 14
4 years of age;

5 b. You had sexual intercourse with Jane Doe on more than one occasion;

6 c. You coerced Jane Doe to lie to her parents and to law enforcement
7 authorities. You provided money and drugs to Jane Doe to prevent her from telling her
8 parents about your relationship;

9 d. An Order of Protection was issued against you on February 18, 2003 which
10 required that you have no contact with Jane Doe. You violated that order on at least
11 four separate occasions; and

12 e. You provided drugs and alcohol to Jane Doe and other minors at your
13 residence.

14 5. On October 8, 2003, you were charged with two counts of ASSAULT WITH A
15 WEAPON a felony, and one count of ATTEMPTED ASSAULT WITH A WEAPON, a
16 felony. The Affidavit in Support of Motion for Leave to File an Information specifically
17 alleges:

18 a. On October 7, 2003, you dressed in camouflage gear and waited outside the
19 home of Jane Doe. You were equipped with a police scanner, a water bottle, a pistol
20 and a stun gun.

21 b. When Jane Doe's father came outside to lock the garage door, you placed
22 your hand over his mouth and placed a gun against his head. You threatened to shoot
23 if he yelled.

1 c. Jane Doe's mother heard the struggle and came outside to see what was
2 happening. You chased the mother back to the house where she was able to lock the
3 door and call the police.

4 d. You then tried several times to "zap" Jane Doe's father with a stun gun.

5 6. Your actions, and the subsequent criminal charges, disprove the statements
6 contained in your response to the Board.

7 **CONCLUSIONS**

8 The information contained in the fact assertions herein indicate the Licensee has
9 committed unprofessional conduct.

10 **Alleged violation of Mont. Code Ann. § 37-1-316:**

11 Unprofessional conduct. The following is unprofessional conduct for a licensee
12 or license applicant governed by this chapter:

13 (4) signing or issuing, in the licensee's professional capacity, a document or statement
14 that the licensee knows or reasonably ought to know contains a false or misleading
15 statement;

16 (18) conduct that does not meet the generally accepted standards of the practice.
17

18 **SUMMARY SUSPENSION ORDER**

19 THE SCREENING PANEL OF THE BOARD HEREBY FINDS, based on its
20 reasonable cause finding on the allegations above, that the public health, safety and
21 welfare requires immediate action in this matter, and

22 ***IT IS THEREFORE ORDERED that the license of Licensee to act as a***
23 ***Licensed Nurse in the state of Montana, be immediately and summarily***
24 ***suspended for an indefinite period of time pending further investigative and***
25

1 **disciplinary proceedings. Pursuant to Mont. Code Ann. §37-1-312(4), any and all**
2 **documentation of licensure for the year 2004 must be returned to the Board of**
3 **Nursing in person or by mail to the Board within 24 hours of receiving this**
4 **suspension notice. Documents may be mailed to the Board at the following**
5 **address:**

6 **Montana Department of Labor and Industry**
7 **Board of Nursing**
8 **Post Office Box 200513**
9 **Helena, Montana 59620-0513**

10 **You are further required to provide the Board with the name and address of your**
11 **current employer.**

12 **UNIFORM PROFESSIONAL LICENSING AND REGULATION PROCEDURE**

13 You are advised that the law provides:

14 **37-1-309. Notice -- request for hearing.** (1) If a reasonable cause determination
15 is made pursuant to 37-1-307 that a violation of this part has occurred, a notice must be
16 prepared by department legal staff and served on the alleged violator. The notice may
17 be served by certified mail to the current address on file with the board or by other
18 means authorized by the Montana Rules of Civil Procedure. The notice may not allege
19 a violation of a particular statute, rule, or standard unless the board or the board's
20 screening panel, if one has been established, has made a written determination that
21 there are reasonable grounds to believe that the particular statute, rule or standard has
22 been violated.

23 (2) A licensee or license applicant shall give the board the licensee's or applicant's
24 current address and any change of address within 30 days of the change.

1 (3) The notice must state that the licensee or license applicant may request a
2 hearing to contest the charge or charges. **A request for a hearing must be in writing**
3 **and received in the offices of the department within 20 days after the licensee's**
4 **receipt of the notice.** Failure to request a hearing constitutes a default on the charge
5 or charges, and the board may enter a decision on the basis of the facts available to it.

6 **37-1-312. Sanctions -- stay --costs --stipulations.** (1) Upon a decision that a
7 licensee or license applicant has violated this part or is unable to practice with
8 reasonable skill and safety due to a physical or mental condition or upon stipulation of
9 the parties as provided in subsection (3), the board may issue an order providing for
10 one or any combination of the following sanctions:

- 11 (a) revocation of the license;
- 12 (b) suspension of the license for a fixed or indefinite term;
- 13 (c) restriction or limitation of the practice;
- 14 (d) satisfactory completion of a specific program of remedial education or treatment;
- 15 (e) monitoring of the practice by a supervisor approved by the disciplining authority;
- 16 (f) censure or reprimand, either public or private;
- 17 (g) compliance with conditions of probation for a designated period of time;
- 18 (h) payment of a fine not to exceed \$1,000 for each violation. Fines must be
19 deposited in the state general fund.
- 20 (i) denial of a license application;
- 21 (j) refund of costs and fees billed to and collected from a consumer.

22 (2) A sanction may be totally or partly stayed by the board. To determine which
23 sanctions are appropriate, the board shall first consider the sanctions that are
24 necessary to protect or compensate the public. Only after the determination has been
25

1 made may the board consider and include in the order any requirements designed to
2 rehabilitate the licensee or license applicant.

3 (3) The licensee or license applicant may enter into a stipulated agreement resolving
4 potential or pending charges that includes one or more of the sanctions in this section.

5 The stipulation is an informal disposition for the purposes of 2-4-603.

6 (4) A licensee shall surrender a suspended or revoked license to the board within 24
7 hours after receiving notification of the suspension or revocation by mailing it or
8 delivering it personally to the board.

9 **2-4-631(3).** (3) Whenever notice is required, no revocation, suspension,
10 annulment, withdrawal, or amendment of any license is lawful unless the agency gave
11 notice by mail to the licensee of facts or conduct which warrant the intended action. If
12 the agency finds that public health, safety, or welfare imperatively requires emergency
13 action and incorporates a finding to that effect in its order, summary suspension of a
14 license may be ordered pending proceedings for revocation or other action. These
15 proceedings shall be promptly instituted and determined.

16 ***The Montana Board of Nursing wants to further inform you that you are***
17 ***hereby noticed that any petition for reinstatement must be made according to***
18 ***certain conditions which will be determined by the board at the time of petition***
19 ***for reinstatement.***

20 STATEMENT OF RIGHTS

21 You are entitled to a hearing on the proposed discipline against your license
22 before an impartial and independent Hearing Examiner appointed by the Department of
23 Commerce as provided in the Montana Administrative Procedure Act. Mont. Code Ann.
24

1 § 2-4-601, et seq., and § 37-1-121. You have a right to be represented by an attorney
2 at such hearing and during related proceedings.

3 If you want to have a hearing and the opportunity to contest the proposed action,
4 you must, in writing, advise Lisa Addington, Bureau Chief, Business Standards Division,
5 Department of Labor and Industry, 301 South Park, P.O. Box 200513, Helena, Montana
6 59620-0513, in writing. Your request must be received in the offices of the Department
7 within twenty (20) days after your receipt of this notice.

8 DATED this 28th day of April, 2004.

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10 
11 LORI BALLINGER
12 Department Counsel
13 Montana Board of Nursing

14 CERTIFICATE OF SERVICE

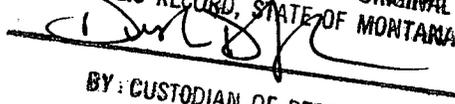
15 I hereby certify that on this 28th day of April, 2004, I caused a true and accurate
16 copy of the foregoing Notice of Summary Suspension and Opportunity for Hearing to be
17 served upon the Licensee by placing it in the U.S. mail, certified # 7001 2510 0001
18 1223 3789 postage prepaid, addressed as follows:

19 John Vollhaber
20 c/o Flathead County Detention Center
21 800 South Main
22 Kalispell, MT 59901

23
24 
25

1 M. Gene Allison
2 DEPARTMENT OF LABOR & INDUSTRY
3 Office of Legal Services
4 301 South Park Avenue,
5 P.O. Box 200513
6 Helena, MT 59620-0513

7 Phone: (406)841-2317

CERTIFIED CORRECT COPY OF ORIGINAL
OF PUBLIC RECORD, STATE OF MONTANA

BY: CUSTODIAN OF RECORDS

8 **BEFORE THE BOARD OF NURSING**
9 **DEPARTMENT OF LABOR AND INDUSTRY**
10 **STATE OF MONTANA**

11 **IN THE MATTER OF THE DISCIPLINARY**)
12 **TREATMENT OF THE LICENSE OF**)
13 **JOHN VOLLHABER.**)
14 License No. RN 12488)

Docket No. CC-04-149-NUR

Complaint # CC-2003-173-NUR

REQUEST FOR ENTRY
OF DEFAULT

15 TO: THE BOARD OF NURSING

16 Please enter the default of Respondent/Licensee, John Vollhaber, with respect to the
17 *Notice of Summary Suspension and Opportunity for Hearing* filed and served in the above-
18 entitled matter, pursuant to Rule 55(a), M.R.Civ.P., because of his failure to plead or
19 otherwise defend against such Notice, as will appear from the affidavit filed herewith.

20 DATED this 15 day of November, 2006.

21
22
23 
24 M. GENE ALLISON
25 Legal Counsel
26 Department of Labor and Industry
27
28

REQUEST FOR ENTRY OF DEFAULT

In re John Vollhaber, Docket No. CC-04-149-NUR

EXACT COPY OF ORIGINAL
PUBLIC RECORDS STATE OF MONTANA
BY: CUSTODIAN OF RECORDS

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF THE DISCIPLINARY) Docket No. CC-04-149-NUR
TREATMENT OF THE LICENSE OF)
JOHN VOLLHABER.) Complaint # CC-2003-173-NUR
License No. RN 12488)
)
) AFFIDAVIT OF
) JOAN E. BOWERS

STATE OF MONTANA)
Lewis & Clark County) : ss.:

I, JOAN E. BOWERS, being first duly sworn, depose and say as follows:

1. I am a citizen of the United States, over the age of eighteen years, a resident of Lewis and Clark County, Montana, by profession an employee of the Montana Department of Labor and Industry (the Department), and Compliance Specialist for the Board of Nursing.

2. I am familiar with the procedural history of this case and have personal knowledge of the same.

3. On or about April 29, 2004, the Department duly served Respondent/Licensee **John Vollhaber** by Certified Mail, receipt # 7001 2510 0001 1223 3789, with a *Notice of Summary Suspension and Opportunity for Hearing*, Docket No. CC-04-149-NUR. The Notice provided a statement of rights which contained a specific notice to Respondent/Licensee that he was required to submit a written request for a hearing within twenty days of the date on which he received the Notice in order to preserve his right to challenge the proposed action under the jurisdiction of the Board of Nursing. On or about May 18, 2004, Respondent/Licensee responded stating that he had not yet gone to trial on

1 the underlying criminal charges. He also averred that "Only after I have been convicted or
2 sentenced can you make a legal and justifiable decision. Therefore I must request that no
3 action of suspension take place until such action is legally justified".

4 On or about January 12, 2005, Respondent/Licensee was convicted of Assault With
5 A Weapon and Sexual Intercourse Without Consent, both felonies. Respondent/Licensee
6 was sentenced to prison sentences of 10 years and 20 years respectively on the charges.
7 Respondent/Licensee is currently serving the prison sentences at the Crossroads Correctional
8 Center in Shelby, Montana.

9 On August 24, 2006, Deputy Chief Counsel, Arthur M. Gorov wrote a letter to
10 Respondent/Licensee noting that the criminal charges against Respondent/Licensee had now
11 been finalized with convictions and that Mr. Gorov assumed that Respondent/Licensee was
12 no longer requesting the hearing. Mr. Gorov advised that if he did not hear to the contrary
13 from Respondent/Licensee within a reasonable time period, he would seek to close the file.
14 On or about September 26, 2006, Mr. Gorov again sent a letter to Respondent/Licensee in
15 which he verified his belief that Respondent/Licensee had withdrawn his request for a
16 hearing. Since Mr. Gorov's letters, no continued request for hearing has been received.
17 Consequently, Respondent/Licensee has withdrawn his request for a hearing, or has failed to
18 plead or otherwise defend as provided in the Montana Rules of Civil Procedure.

19 4. I am informed and verily believe and upon such information and belief state that
20 **John Vollhaber** is not now an incompetent person or minor and was not such when the
21 instant action was commenced; further, that John Vollhaber is not now a member of the
22 military or naval services of the United States, nor has he been a member thereof within six
23 months preceding commencement of this action.
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1 5. As Compliance Specialist for the Board of Nursing, I request that the default of
2 John Vollhaber be duly entered with respect to the *Notice of Summary Suspension and*
3 *Opportunity for Hearing* filed and served in this matter.

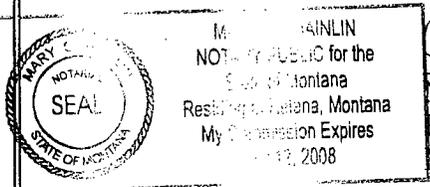
4 FURTHER AFFIANT SAYETH NOT.

5 DATED this 15th day of November, 2006.

7 Joan E. Bowers
8 JOAN E. BOWERS

10 On this 15th day of November, 2006, before me, a Notary Public for the State
11 of Montana, personally appeared JOAN E. BOWERS, known to me to be the person whose
12 name is subscribed to the within instrument, that the same is true and correct and
13 acknowledged to me that he executed the same.

15 IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day
16 and year first written above.



18 Mary C. Hanlin
19 Notary Public for the State of Montana
20 Residing at: Helena, Montana
21 My commission expires: July 13, 2008

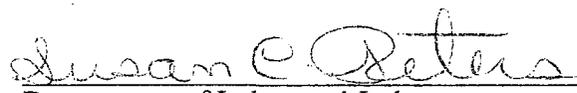
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of November, 2006, I served a true and accurate copy of the foregoing **REQUEST FOR ENTRY OF DEFAULT** by U.S. mail, postage prepaid, upon the following parties addressed as follows:

John Vollhaber
DOC ID #2080533
Crossroads Correctional Center
75 Heath Road
Shelby, MT 59474

Board of Nursing
301 South Park Avenue
P.O. Box 200513
Helena, MT 59620-0513



Department of Labor and Industry

VERIFIED CORRECT COPY OF ORIGINAL
OF PUBLIC RECORD, STATE OF MONTANA
BY: CUSTODIAN OF RECORDS

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF THE
DISCIPLINARY TREATMENT OF THE
LICENSE OF
JOHN VOLLHABER, License #RN 12488

) Docket No. CC-04-149-NUR
)
) Complaint # CC-2003-173-NUR
)
) ORDER GRANTING ENTRY
) OF DEFAULT
)

On April 29, 2004, John Vollhaber, Respondent/Licensee in the above-entitled action, was duly served with the *Notice of Summary Suspension and Opportunity for Hearing*, Docket No. CC-04-149-NUR. The Notice provided a statement of rights which contained a specific notice to Respondent/Licensee that he was required to submit a written request for a hearing within twenty days of the date on which he received the Notice in order to preserve his right to challenge the proposed action under the jurisdiction of the Board of Nursing.

On or about May 18, 2004, Respondent/Licensee responded stating that he had not yet gone to trial on the underlying criminal charges. He also averred that "Only after I have been convicted or sentenced can you make a legal and justifiable decision. Therefore I must request that no action of suspension take place until such action is legally justified".

On or about January 12, 2005, Respondent/Licensee was convicted of Assault With A Weapon and Sexual Intercourse Without Consent, both felonies. Respondent/Licensee was sentenced to prison sentences of 10 years and 20 years respectively on the charges. Respondent/Licensee is currently serving the prison sentences at the Crossroads Correctional Center in Shelby, Montana.

1 On August 24, 2006, Deputy Chief Counsel, Arthur M. Gorov wrote a letter to
2 Respondent/Licensee noting that the criminal charges against Respondent/Licensee had now
3 been finalized with convictions and that Mr. Gorov assumed that Respondent/Licensee was
4 no longer requesting the hearing. Mr. Gorov advised that if he did not hear to the contrary
5 from Respondent/Licensee within a reasonable time period, he would seek to close the file.
6 On or about September 26, 2006, Mr. Gorov again sent a letter to Respondent/Licensee in
7 which he verified his belief that Respondent/Licensee had withdrawn his request for a
8 hearing. Since Mr. Gorov's letters, no continued request for hearing has been received.
9 Consequently, Respondent/Licensee has withdrawn his request for hearing or has failed to
10 plead or otherwise defend as provided in the Montana Rules of Civil Procedure. The
11 Department requested entry of default on November 15, 2006.
12

13 **IT IS THEREFORE ORDERED** that the default of the Respondent/Licensee is
14 entered for failure to contest the *Notice of Summary Suspension and Opportunity for*
15 *Hearing*. For purposes of this order, the fact assertions contained in the Notice issued in the
16 above-entitled matter are hereby adopted as the findings of fact and the conclusions of said
17 Notice are adopted as the conclusions of law.
18

19 A final order providing for disposition of this matter will be subsequently entered.

20 DATED this 25th day of January, 2007.
21

22 By: Kathy Hayden
23 PRESIDING OFFICER
24 BOARD OF NURSING
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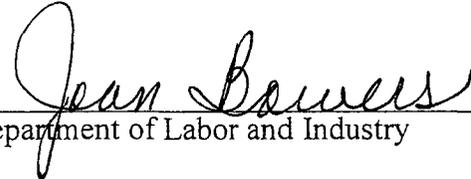
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February, 2007, I served a true and accurate copy of the foregoing **ORDER GRANTING ENTRY OF DEFAULT** by U.S. mail, postage prepaid, upon the following parties addressed as follows:

John Vollhaber
DOC ID #2080533
Crossroads Correctional Center
75 Heath Road
Shelby, MT 59474

M. Gene Allison
Legal Counsel
Department of Labor and Industry



Department of Labor and Industry

CERTIFIED CORRECT COPY OF ORIGINAL
OF PUBLIC RECORD STATE OF MONTANA
BY: CUSTODIAN OF RECORDS

BEFORE THE BOARD OF NURSING
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

IN THE MATTER OF THE)
DISCIPLINARY TREATMENT)
OF THE LICENSE OF)
JOHN VOLLHABER, License #RN 12488)

Docket No. CC-04-149-NUR
Complaint # CC-2003-173-NUR
FINAL ORDER
OF DEFAULT

On April 29, 2004, a *Notice of Summary Suspension and Opportunity for Hearing* was served on John Vollhaber, Respondent/Licensee in the above-entitled action, by Certified Mail receipt # 7001 2510 0001 1223 3789. The Notice provided a statement of rights which contained a specific notice to Respondent/Licensee that he was required to submit a written request for a hearing within twenty days of the date on which he received the Notice in order to preserve his right to challenge the proposed action under the jurisdiction of the Board of Nursing.

On or about May 18, 2004, Respondent/Licensee responded stating that he had not yet gone to trial on the underlying criminal charges. He also averred that "Only after I have been convicted or sentenced can you make a legal and justifiable decision. Therefore I must request that no action of suspension take place until such action is legally justified".

On or about January 12, 2005, Respondent/Licensee was convicted of Assault With A Weapon and Sexual Intercourse Without Consent, both felonies. Respondent/Licensee was sentenced to prison sentences of 10 years and 20 years respectively on the charges. Respondent/Licensee is currently serving the prison sentences at the Crossroads Correctional Center in Shelby, Montana.

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2 Respondent/Licensee noting that the criminal charges against Respondent/Licensee had now
3 been finalized with convictions and that Mr. Gorov assumed that Respondent/Licensee was
4 no longer requesting the hearing. Mr. Gorov advised that if he did not hear to the contrary
5 from Respondent/Licensee within a reasonable time period, he would seek to close the file.
6 On or about September 26, 2006, Mr. Gorov again sent a letter to Respondent/Licensee in
7 which he verified his belief that Respondent/Licensee had withdrawn his request for a
8 hearing. Since Mr. Gorov's letters, no continued request for hearing has been received.
9 Consequently, Respondent/Licensee has withdrawn his request for hearing or has failed to
10 plead or otherwise defend as provided in the Montana Rules of Civil Procedure.
11 Accordingly, and upon the request of Department counsel on November 15, 2006 the Board
12 issued an order granting entry of default.
13

14 For purposes of this order, the fact assertions and conclusions contained in the *Notice*
15 *of Summary Suspension and Opportunity for Hearing* issued in the above-entitled matter are
16 hereby adopted by the Board and fully incorporated into this final order as the findings of
17 fact and the conclusions of law.
18

19 Based upon John Vollhaber's default for failing to request a hearing and the
20 information presently before the Board, including the aforementioned findings of fact and
21 conclusions of law, the Board enters the following:
22

23 **IT IS HEREBY ORDERED** that Licensee's license to practice nursing in the state
24 of Montana is revoked. Licensee shall immediately return his license to the Board of
25 Nursing, to the Board office at the following address:

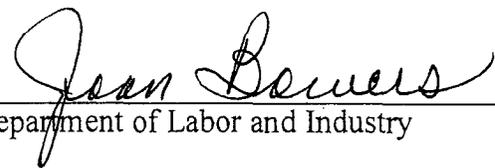
26 Board of Nursing
27 301 South Park
28 P.O. Box 200513
Helena, MT 59620-0513

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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of February 2007, I served a true and accurate copy of the foregoing **FINAL ORDER OF DEFAULT** by U.S. mail, postage prepaid, upon the Licensee addressed as follows:

John Vollhaber
DOC ID #2080533
Crossroads Correctional Center
75 Heath Road
Shelby, MT 59474



Department of Labor and Industry